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//////////////////OFFICE OF LOGISTICS
PROCUREMENT NOTE NO. 18

11 FEB 1969

DEFINITIZATION OF
LETTER CONTRACTS OR LETTERS OF INTENT

1. Recent publications have dealt with various aspects of letter contracts. Of particular interest at this time is the attention being paid definitization of them.
2. The Armed Services Procurement Regulation (ASPR) Committee has proposed changes to ASPR 3-408 and 7-802.5 in an attempt to "strike a more equitable balance between the rights of the Government and the contractor."
3. The ASPR Committee Chairman has said that Government actions sometimes contribute to delays in definitizing letter contracts, but a substantial portion of the blame for definitization delay rests with the contractor. Most Contracting Officers say that an inordinate delay is often due to the desire of contractors to gain substantial cost experience before definitizing the contract.
4. Termination of a letter contract is not a generally acceptable solution to definitization failure.
5. The proposed revision to ASPR provides that, if agreement on a definitive contract is not reached within 30 days following the target date established in the definitization clause (extensions may be granted by Contracting Officers), contractors are required to proceed with the completion of the work subject to the "Limitation of Government Liability" clause. The Contracting Officer is given the option of either paying the contractor his cost without fee or a reasonable price subject to appeal under the "Disputes" clause. Contractors who have not heard from Contracting Officers within 45 days after the definitization target date (or any extension date) automatically will be marked for payment of cost without fee.
6. The ASPR Committee noted that letter contracts contemplating fixed-price contracts do not contain a provision requiring contractors to separately identify costs incurred under letter contracts. As the proposed revision of the "Definitization" clause makes it possible for any letter contract to wind up as a cost-type relationship, it is considered appropriate to include the "Audit and Records" clause (7-104.41.c) in all letter contracts. This has been accomplished by adding a new paragraph (7-802.6) making this clause mandatory.

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7. In view of the problems encountered in several Agency-issued letter contracts of the past 12 months, the foregoing will be followed with interest. In addition, all Procurement Officers are to exert strict control over the administration of all letter contracts they issue.

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Director of Logistics

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